State of California

Board of Equalization
Legal Department-MIC: 82

Memorandum

To: Honorable Betty T. Yee, Chairwoman
Honorable Judy Chu, Ph.D., Vice-Chair
Honorable Bill Leonard, Second District
Honorable Michelle Steel, Third District
Honorable John Chiang, Controller

Date: January 11, 2008

From: Kristine Cazadd
Chief Counsel

Subject: **Request for Guidance – Welfare Exemption**
"Community Benefit Test" Under Revenue and Taxation Code section 214
February 1, 2008 Board Meeting – Chief Counsel Matters

Staff seeks the Board's guidance regarding its intent for the proper definition of "community" in the interpretation of the "community benefit test," a test which must be met in order to qualify for property tax exemption under the charitable purposes aspect of the welfare exemption.[1] Revenue and Taxation Code[2] section 214, subdivision (a), which implements California Constitution article XIII, section 4, subdivision (b), provides that "[p]roperty used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations, limited liability companies, or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation" if certain requirements are met. Where charitable purposes are involved, one such requirement is that the charitable activities must benefit "the community as a whole or an unascertainable portion thereof."[3]

Due to this reference to the "community," this requirement has commonly become known as the "community benefit test."[4] Historically, it has been interpreted as requiring that an organization's claimed charitable activities must be found to primarily benefit persons within the geographical boundaries of the State of California. In other words, the Board staff's long-standing administrative interpretation of "community benefit" has defined "community" as being co-extensive with the state's territorial boundaries and limited application of the exemption accordingly. Recently, however, certain nonprofit organizations that engage in charitable activities have requested an expanded definition of the "community benefit test" that would contain no such geographical limitation.

The issue, therefore, is whether or not the definition of community properly may or should be expanded as requested for purposes of application of the "community benefit test." This issue initially was raised at the July 17, 2007 Board Meeting, at which time the Board directed staff to

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[1] Rev. & Tax. Code, § 214.
[2] All statutory references are to the Revenue and Taxation Code unless otherwise specified.
[3] *Stockton Civic Theatre v. Board of Supervisors* (1967) 66 Cal.2d 13, 22.
[4] See Assessors' Handbook Section 267, *Welfare, Church, and Religious Exemptions* (Oct. 2004) (AH 267), pp. 2-7 for a general discussion and history of the test.

meet with interested parties to discuss the issues and ramifications of such an expanded interpretation of the "community benefit test." Such a meeting was conducted on September 19, 2007, after which additional comments also were submitted and considered.

Set forth below is a discussion of the issues that both incorporates and addresses the arguments and comments of the interested parties.

I. Historical Background

A. *Development of the Community Benefit Test*

California Constitution article XIII, section 1, subdivision (c) was added in 1944 by Proposition 4. This constitutional amendment authorized the Legislature to exempt from property taxation "all or any portion of property used exclusively for religious, hospital or charitable purposes. . . ."[5] The argument in support of Proposition 4 stated that the proposition was necessary because:

> California is the only State which taxes the property of welfare agencies serving youth, old age, the sick and handicapped. Proposition Four authorizes the Legislature to exempt these organizations from property taxes and thus place California in line with the sound and wise practice of the other 47 States.

Section 214 was enacted in 1945 to implement Proposition 4. However, neither the California Constitution nor section 214 defines the word "charitable."

After the enactment of section 214 in 1945, a line of judicial decisions defined the word "charitable" for purposes of the welfare exemption. These cases reflect the courts' determination that qualification for exemption under section 214 should be based upon a "strict, but reasonable construction of the exempting language,"[6] and the courts' expansion of the notion of "charity" from relief of the poor to activities that benefit the community as a whole by serving humanitarian goals.[7] Thus, in *Fredericka Home for the Aged*, the California Supreme Court considered whether an organization providing a home for elderly people qualified as a charitable organization for purposes of section 214, ultimately finding that: the determination should be based upon a "strict, but reasonable construction of the exempting language"; an organization must "actually dispense charity" to qualify as a charitable organization; and that a home for the elderly was "charitable" because it had been recognized as such since the reign of Queen Elizabeth, I.[8]

Some years later, in *Lundberg v. County of Alameda,*[9] the California Supreme Court considered whether organizations providing schools for students of less than collegiate grade qualified as

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[5] This constitutional provision was readopted by the electorate on November 5, 1974 as article XIII, section 4, subdivision (b) as part of the 1974 revision of the California Constitution. According to the argument in support of the measure, "Though the proposal shortens the Article by 8,200 words, it makes only technical changes in the Constitution and clarifies the meaning of existing sections."

[6] *Fredericka Home for the Aged v. County of San Diego* (1950) 35 Cal.2d 789, 792.

[7] See *Peninsula Covenant Church v. County of San Mateo* (1979) 94 Cal.App.3d 382.

[8] *Fredericka Home for the Aged, supra,* 35 Cal.2d at pp. 794-795.

[9] (1956) 46 Cal.2d 644.

charitable organizations within the meaning of California Constitution article XIII, section 1, subdivision (c). Prior to this decision, it was thought that educational activities were not properly includable within those activities considered to be "charitable." The court, however, stated that section 214 was to be construed broadly and that "charity" is:

> a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons – either by bringing their hearts under the influence of education, or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.[10]

Later, in *Stockton Civic Theatre v. Board of Supervisors of San Joaquin County,*[11] the California Supreme Court considered whether an amateur community theatre organization qualified as charitable within the meaning of California Constitution article XIII, section 1, subdivision (c), and section 214. The Supreme Court began by looking to its earlier pronouncements in *Lundberg*, confirming its opinion that the word "charitable" should be broadly construed, "unless exceptional reasons appear for limiting the grant of power."[12] Then, turning to the Restatement Second of Trusts, which states that a "charitable activity must benefit the community as a whole or an unascertainable portion thereof,"[13] the Supreme Court fashioned what is now known as the "community benefit test." The Supreme Court did not, however, define the term "community."

B. *The Board's Historic Interpretation of the "Community Benefit Test"*

Historically, staff's interpretation of the "community benefit test" has been to define the relevant community that must be benefited as co-extensive with the geographical boundaries of the State of California. While the question has never been tested in court, it has been the Legal Department's opinion that California courts "would designate the State of California, or a portion thereof, as the relevant 'community' in any welfare exemption action which they might be called upon to consider," and that, thus, a qualified organization's charitable activities must be found to be of benefit to some persons within the state's boundaries in order for such allegedly charitable activities to be found to satisfy the community benefit test. Accordingly, pursuant to staff's historical definition of "community," an organization could not qualify for the welfare exemption if its allegedly charitable activities were not found to benefit persons within the state's boundaries.[14]

The Legal Department's opinion was based on several appellate decisions that defined "community" as the California community for other purposes in other contexts.[15] It was also

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[10] *Id.* at p. 649.
[11] (1967) 66 Cal.2d 13.
[12] *Id.* at pp. 18-19.
[13] *Stockton Civic Theatre, supra,* 66 Cal.2d 13 at p. 22.
[14] We are aware of six legal opinions written between 1976 and 1984 opining that the "community" that must be benefited is the California community.
[15] See, for example, *Keech v. Joplin* (1909) 157 Cal. 1 (defining "community" as "people who reside in a given locality in more or less proximity" for purposes of a 1907 law authorizing "communities" to organize special protection districts within counties); *Gist v. French* (1955) 136 Cal.App.2d 247 (defining "community" as "an area

based on the following principle: since a property tax exemption shifts the tax burden to in-state properties that remain taxable, the term "community" must be defined so as to restrict the exemption to those organizations whose charitable activities benefit some group of persons within the state's boundaries – otherwise, the exemption will not be "fair, equitable and in the public interest for the balance of taxpayers to subsidize the exempt property."[16] Finally, a relatively strict construction of "community" was thought to be consistent with the 1944 Proposition 4 ballot language which added the welfare exemption to the California Constitution. The argument in favor of Proposition 4 stated:

> These nonprofit organizations assist the people by providing important health, citizenship, and welfare services. They are financed in whole or in part by your contributions either directly or through a Community Chest. It is good public policy to encourage such private agencies by exemption rather than to continue to penalize and discourage them by heavy taxation.
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> *The ability of these agencies to serve you is reduced when a share of your contribution given to aid their work is absorbed by the property tax.* The tax has also discouraged and in many cases prevented charitable agencies from securing greatly needed additional facilities to meet growing population needs. Both the present services and the equipment of these agencies are far below normal in California. The tax has thus proved a bad tax in its effect on these important services.
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> Of California's total tax levy of $316,001,918.00, approximately 303 charities owning real property pay $759,916.21. Exemption of these charities from taxation would mean a loss to counties of only 2/10th of 1%. To the taxpayer this would mean a possible 1¢ increase per hundred dollars of assessed valuation. *Additional health and welfare services resulting from the exemption, in fact, would save taxpayers the entire exemption cost.*[17] (Emphasis added.)

Based on this language, the Legal Department believed that the intent of Proposition 4, and consequently, of section 214, was to provide benefits in the form of additional charitable services in exchange for a property tax exemption. And since the property tax is limited to the state's boundaries, the charitable benefits and services should likewise be limited to those same boundaries.

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as is governed by the same laws, and the people are unified by the same sovereignty and customs" for medical malpractice purposes); and *In re Giannini* (1968) 69 Cal.2d 563 (defining "community" as the State of California for purposes of determining whether certain live performances affronted contemporary community standards of decency.)

[16] May 25, 1977 Letter from Legal Department.

[17] http://traynor.uchastings.edu/cgi-bin/starfinder/3975/calprop.txt.

II. Analysis and Discussion

In the opinion of the Legal Department, while a continued interpretation of the "community benefit test" requiring that charitable activities be performed primarily within the state's boundaries is reasonable, as explained below, a review of relevant constitutional, statutory, and judicial authorities does not compel a construction of the "community benefit test" that so limits the definition of qualifying charitable activities.

A. *Courts' Construction of Charitable Purposes Aspect of the Welfare Exemption*

Neither California Constitution article XIII, section 4, subdivision (b), nor section 214 define either the term "community" or "charitable purposes." Thus, there is no express constitutional or statutory requirement that the activities of charitable organizations seeking the welfare exemption benefit persons within the state's boundaries. Given this lack of clear definition in the governing language, a court must interpret the constitutional and statutory language pursuant to the following rules of construction:

> [The court's] function is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. [citation] To ascertain such intent, courts turn first to the words of the statute itself, and seek to give the words employed by the Legislature their usual and ordinary meaning. [citation] *When interpreting statutory language, we may neither insert language which has been omitted nor ignore language which has been inserted.* [citation] The language must be construed in the context of the statutory framework as a whole, keeping in mind the policies and purposes of the statute, and where possible the language should be read so as to conform to the spirit of the enactment [citation].[18] (Emphasis added.)

In the view of the Legal Department, a review of the judicial decisions that have interpreted the "charitable purposes" aspect of the welfare exemption can reasonably be read to use the word "community" not as a maximum geographic boundary within which charitable services must be rendered, but rather as a limitation on the minimum class or number of potential beneficiaries that are eligible to benefit from a particular charitable activity. In other words, such decisions can be read to use the term "community benefit" as a benefit to a sufficiently large group of potential beneficiaries so as to be "unascertainable," as opposed to a benefit only to an insufficiently small group of potential beneficiaries. Thus, only those charitable activities aimed at benefiting a sufficiently large category of people will be found to qualify as charitable, while those intending to benefit only a small class of people – such as an organization's founders or members – will not. In reaching this opinion, the Legal Department notes that: (1) courts have held that the term "charitable" should be broadly construed; and (2) courts have cited the law of charitable trusts in determining the meaning of "community" and charitable trust law does not restrict "community" to any particular geographic boundary.

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[18] *Scripps Clinic and Research Foundation v. County of San Diego* (1997) 53 Cal.App.4th 402, 409-410.

1. *"Charitable purposes" may be broadly construed.*

Cases discussing the "charitable purposes" aspect of the welfare exemption, and concluding that an organization's charitable activities must benefit "the community as a whole or an unascertainable portion thereof," have held that the term "charitable" as it appears in the Constitution is to be construed broadly.[19] For example, in *YMCA v. County of Los Angeles*, the Supreme Court stated that:

> . . . the rule of strict construction generally applicable to tax exemption laws must prevail here, but adherence to such legal principle does not require that the narrowest possible meaning be given to the exempting language if it would establish too severe a standard and defeat the apparent object of the law. Rather the construction of the law, though strict, must also be reasonable.[20]

And in *Lundberg*, the Court stated that the "wide and varied nature of the exemption . . . clearly indicates a purpose and intention to give the words here in question a broad rather than a strict meaning" and does not require that they be narrowly construed against the exemption.[21]

Arguably, then, a broad construction of "charitable purposes" would not be consistent with a narrow definition of "community," especially when, as explained below, courts defining "charitable purposes" have repeatedly turned to the law of charitable trusts to define what is "charitable." And the term "community," for charitable trust purposes, is not a geographic limitation on where otherwise charitable activities can be conducted, but rather pertains to the size of the class of people to which charitable benefits are available. In other words, in order to qualify as a charitable activity, the activity must serve an unascertainable "community" as opposed to a limited number of people such as a group's founders or members.

2. *The law of charitable trusts does not restrict "community" to a geographic boundary.*

As stated above, judicial decisions have turned to the law of charitable trusts in considering the definition of "charitable" for welfare exemption purposes. For example, several cases, including *Lundberg* and *Stockton Civic Theatre*, citing charitable trust cases, state that:

> A bequest is charitable if: (1) It is made for a charitable purpose; its aims and accomplishments are of religious, educational, political or general social interest to mankind. [citations omitted.] (2) *The ultimate recipients constitute either the community as a whole or an unascertainable and indefinite portion thereof.* [citations omitted.] The charitable nature of an institution is determined on the same basis.[22] (Emphasis added.)

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[19] See *Lundberg v. County of Alameda, supra,* 46 Cal.2d 644, 650; *Stockton Civic Theatre, supra,* 66 Cal.2d 13, 18; *YMCA v. County of Los Angeles* (1950) 32 Cal.2d 760.

[20] *YMCA v. County of Los Angeles, supra,* 32 Cal.2d at p. 767.

[21] *Lundberg v. County of Alameda, supra,* 46 Cal.2d at p. 651.

[22] *Lundberg v. County of Alameda, supra,* 46 Cal.2d at pp. 650-651; *Stockton Civic Theatre, supra,* 66 Cal.2d at pp. 19-20.

Further, the *Stockton Civic Theatre* Court, in developing the "community benefit test," cited the Restatement Second of Trusts, section 368, comment (a), which states that the "common element of all charitable purposes is that they are designed to accomplish objects which are *beneficial to the community*."[23] (Emphasis added.) The Restatement Second of Trusts, section 368 lists a number of purposes that are considered "charitable," including "other purposes the accomplishment of which is *beneficial to the community*."[24] (Emphasis added.) Notably, the Restatement Second of Trusts, section 374, comment (i), which defines the phrase, "promotion of other purposes beneficial to the community," states the following:

> The mere fact that a trust is created for the benefit of members of a community outside the State or the United States does not prevent the trust from being charitable. Thus, a trust for the benefit of the poor of another State, or a trust to establish a hospital in a foreign country, is charitable.

Thus, considering these factors, the line of cases culminating in the "community benefit test" can reasonably be read to conclude that the California Supreme Court intended to fashion a flexible test for the "wide and varied nature" of charitable activities that would identify organizations whose activities are truly charitable because they benefit a large class of unidentifiable and unascertainable recipients, while separating out organizations providing similar types of services but that are not truly charitable in character because their services only benefit a small class of people such as their founders or members. Therefore, when the California Supreme Court stated that "charitable activity must benefit the community or an unascertainable and indefinite portion thereof" in *Stockton Civic Theatre,* the Board could reasonably conclude that the use of the word "community" was not intended to set a geographic boundary or require that the class always include persons within state boundaries.

This reading of the case law is consistent with the Internal Revenue Service's (IRS) rules for determining whether a charitable activity benefits a "charitable class," an IRS requirement similar to California's "community benefit test." For example, specifically for the charitable activity of providing relief to victims of a disaster, the IRS states that to accomplish its charitable purpose, an organization must benefit a "charitable class."[25] A "charitable class" is then defined as follows:

> The group of individuals that may properly receive assistance from a charitable organization is called a *charitable class. A charitable class must be sufficiently large or indefinite that the community as a whole rather than a pre-selected group of people is benefited.* For example, a charitable class could consist of all individuals located in a city, county, or state. This charitable class is large and benefits to it benefit the entire geographic community.[26] (Second emphasis added.)

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[23] *Stockton Civic Theatre, supra,* 66 Cal.2d at p. 20.
[24] Rest.2d Trusts, § 368, subd. (f).
[25] IRS Publication 3833, p. 4.
[26] *Id.* at p. 5.

Thus, the example of a charitable class consisting of individuals located in a city, county, or state, is given to suggest that the class of beneficiaries (i.e., the community) must be large, not that charitable activities must be restricted to a particular geographic boundary. This is further confirmed by Revenue Ruling 71-460,[27] which held that activities which are truly charitable when conducted within the United States are still charitable within the meaning of Internal Revenue Code (IRC) section 501(c)(3) when conducted partially or solely in a foreign country.

B. *Property Tax Burden Shift to Non-Exempt Taxpayers*

Arguably, expanding the community benefit test to allow organizations that do not primarily provide charitable services in the state to qualify for the welfare exemption unfairly shifts the tax burden to all the other taxpayers in the state. Opponents to an expanded definition of the "community benefit test" argue that this is improper because taxpayers who are shouldering more of the tax burden are receiving no corresponding benefit, and because the argument in favor of Proposition 4 shows an intent that, in exchange for property tax relief, Californians should receive greater charitable services.

Proponents of an expanded interpretation of the "community benefit test" argue, however, that communities are benefited not only by the direct receipt of charitable services, but are also recipients of indirect benefits such as, through their donations, participating in charitable work around the globe with the assurance that their donations are made to a reputable charitable organization.

While it is not clear that section 214 and the cases interpreting "charitable purpose" intended such a broad meaning of the word "benefit" – to include both direct and indirect benefits – at least two court cases suggest that "benefit" should not be so strictly construed so as to be limited to only the direct benefits of the services performed by the nonprofit organization. For example, in *Clubs of California for Fair Competition v. Kroger*, the court stated that, if an institution serves an interest historically regarded as being closely tied to the public welfare, an *indirect* public benefit, such as potential tax savings, may be enough to warrant granting of the welfare exemption.[28] And in *Stockton Civic Theatre*, the Court stated that the beneficiaries of a community theatre are not only the audiences but also include those who take part in the theatrical productions.[29]

Proponents of a changed interpretation of the "community benefit test" to include the global community also argue that mid-20th century notions of community should not be applied to test the wide and varied types of activities now being performed by nonprofit organizations both within and without the state, and fail to take into account that the concept of the community is no longer limited by geographical boundaries. For example, one nonprofit organization stated that it is engaged in: environmental cleanup in Mexico that benefits California beaches; habitat restoration in the Colorado River which is a resource used by Californians; protection of wetlands in Mexico that are the breeding grounds of Grey Whales that migrate along the California shoreline; social services in Mexico that may lessen the burden on California social

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[27] 1971-2 C.B. 231.
[28] *Clubs of California for Fair Competition v. Kroger* (1992) 7 Cal.App.4th 709, 717.
[29] *Stockton Civic Theatre, supra*, 66 Cal.2d at p. 20.

services; and, infectious disease treatment and control among at-risk populations in Mexico that may reduce the likelihood that migrant workers and other border crossers with infectious diseases enter the United States. They argue that all of these activities, while performed outside state borders, may have a significant impact within state borders.

However, opponents of an expanded definition of the "community benefit test" contend that, while it is true that Californians donate large sums of money and volunteer time to help charities that perform most of their activities outside the state which may have significant impact within the state's boundaries, this does not necessarily affect the legal definition of "community" under the "community benefit test." They contend that the Proposition 4 ballot initiative argument in favor of the proposal clearly indicates that at least one intent of the initiative was to increase charitable services to in-state persons by reducing the property taxes of charitable organizations.

Nevertheless, while the ballot initiative argument is instructive in discovering the intent of the proposition, it is not conclusive. In fact, the *Lundberg* Court, in upholding the constitutionality of article XIII, section 1, subdivision (c) stated that:

> The history of section [1, subdivision (c)] is inconclusive as to what was intended, and it certainly would not justify a construction of the term charitable contrary to that established by the decisions discussed above [deciding that the word 'charitable' should be broadly construed], adopted by the Legislature in the 1945 and 1951 sessions, and approved by the people on referendum in 1952.[30]

In addition, we note that the ballot argument with respect to eligible activities lists only "welfare agencies serving youth, old age, the sick and handicapped"[31] as organizations whose property taxes should be exempted by Proposition 4. No one argues, however, that Proposition 4 limits qualifying activities to only those groups, especially given that, as explained above and stated in *Peninsula Covenant Church,* court cases have demonstrated an increasing expansion of the notion of what is "charitable:"

> Because this definition of charity as benefiting the community as a whole by serving humanitarian goals clearly contemplates something more than 'the relief of the poor and destitute,' a number of organizations have been found to be exempt despite the presence of facts which under the older, more restrictive view would preclude their characterization as charitable.[32]

Likewise, while the increase of in-state charitable services may have been one motivation for passing Proposition 4, the charitable activities to which Proposition 4 should apply need not necessarily be bound by that single motivation.

Opponents of an expanded definition of the "community benefit test" also argue that a broadened definition of "community" is not warranted since a fundamental justification for the welfare exemption is that the activities of an organization qualifying for exemption lessen the burdens of

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[30] *Lundberg v. County of Alameda, supra,* 46 Cal.2d at p. 653.
[31] http://traynor.uchastings.edu/cgi-bin/starfinder/3975/calprop.txt.
[32] *Peninsula Covenant Church, supra,* 94 Cal.App.3d at p. 398.

government. However, while lessening the burden of government is often cited as justification for the welfare exemption, it is not the only justification. For example, in *Lundberg v. County of Alameda,* the court listed activities considered to be charitable, one of which was "lessening the burdens of government."[33] Additionally, if it was necessary for activities to lessen the burdens of government in order to be considered charitable, the Court in *Stockton Civic Theatre* may not have permitted the exemption for a community theatre organization since it is not necessarily the government's burden to subsidize community theatre activities.[34]

C. *Constitutional Considerations*

Proponents of an expanded definition of "community" argue that the Commerce Clause in the United States Constitution prohibits an interpretation of "community" that would restrict charitable activities from being performed outside the state. The Commerce Clause empowers the United States Congress to "regulate Commerce with foreign Nations, and among the several states."[35] The "dormant" Commerce Clause refers to a United States Supreme Court doctrine prohibiting states from implementing regulatory measures which discriminate against interstate commerce even where Congress has not exercised its Commerce Clause powers to expressly prohibit such regulation.[36] The dormant Commerce Clause prohibits states from practicing certain forms of economic protectionism by prohibiting states from taxing interstate commerce more heavily than intrastate commerce.[37]

In *Camps Newfound/Owatonna v. Town of Harrison, Maine,*[38] a Maine nonprofit corporation operating a summer camp, whose attendees were approximately 95 percent out-of-state residents, challenged a Maine property tax exemption statute that allowed a full property tax exemption only to charitable organizations whose property was used to primarily benefit Maine residents. The United States Supreme Court struck down the Maine statute as violating the dormant Commerce Clause of the United States Constitution, holding that an otherwise generally applicable state property tax violates the Commerce Clause if its exemption for property owned by charitable institutions excludes organizations operated principally for the benefit of nonresidents. The Court rejected arguments that the Commerce Clause did not apply because the camp was not engaged in commerce, the activity was purely intrastate, or a real property tax was at issue.[39] The Court viewed charitable organizations as major market participants for interstate goods and services and stated that, "We see no reason why the nonprofit character of an enterprise should exclude it from the coverage of either the affirmative or the negative [dormant] aspect of the Commerce Clause."[40]

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[33] See page 4 *supra.*
[34] See also *Greek theatre Association v. County of Los Angeles* (1978) 76 Cal.App.3d 768. (The welfare exemption applied to an organization's facilities used by a nonprofit corporation for theatrical and musical presentations by professional performers.)
[35] U.S. Const., art. I, § 8, cl. 3.
[36] See *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Maine* (1997) 520 U.S. 564.
[37] *Id.* at pp. 574-575
[38] (1997) 520 U.S. 564.
[39] *Id.* at p. 574.
[40] *Id.* at p. 584.

In light of this case, proponents of an expanded definition of "community" argue that the current interpretation of the "community benefit test" limiting the welfare exemption to organizations that provide benefits primarily within the State of California violates the Commerce Clause because it favors charitable organizations that use their property to benefit Californians over similar charitable organizations that use their property to benefit persons outside California. This, however, is not a necessary conclusion since *Camps Newfound* dealt with a statute that was per se or facially invalid as discriminatory against interstate commerce.[41] Section 214, on the other hand, would warrant further analysis since it is not facially invalid because there is no language in the text of the statute that expressly restricts the exemption to charitable activities performed within the state. Further, the Maine statute at issue barred a full property tax exemption for in-state activity that primarily served non-residents. As the "community benefit test" is currently interpreted in California, however, an organization engaged in a similar activity carried on within California would not be disqualified for the welfare exemption simply because it primarily served non-residents. Thus, the instant situation is distinguishable from *Camps Newfound*.

D. Administrative Issues

In comments provided during and after the interested parties meeting, county assessors raised concerns about their ability to verify an organization's stated activities. The county assessors argue that this inability to verify out-of-state charitable activities by field inspections constitutes an additional reason to maintain the current administrative interpretation of the community benefit test. They state that it would be impossible to verify by desk audit that property was being used outside the state so as to qualify for the welfare exemption if the definition of "community" is expanded. They also state that performing only desk audits of organizations engaged in activities outside the state while performing field inspections of organizations engaged in activities within the state would, in effect, hold the latter organizations to a higher verification standard.

In response, nonprofit organizations have offered that their out-of-state activities could be verified by the production of various documents, including results of audit by federal agencies such as the IRS and USAID, bills of lading, copies of airplane tickets, expense books, customs documents, pictures, and letters of verification that a project has been completed. We note, however, that the ability to merely inspect documents on an after-the-fact basis does not necessarily provide the same type of verification that can be obtained with field inspections.

E. Revenue Impact

Currently, there are seven pending exemption claims that would be affected by a change in the application of the "community benefit test," amounting to approximately $3.14 million in assessed value. Staff cannot estimate how many additional claims might be filed in the future if the test were to be expanded as discussed herein.

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[41] Me. Rev. Stat. Ann., tit. 36, § 652, subd. (1)(A) (Supp. 1996) provided in relevant part, "Any such [benevolent and charitable] institution that *is in fact conducted or operated principally for the benefit of persons who are not residents of Maine* is entitled to an exemption not to exceed $50,000 of current just value. . . ." (Emphasis added.)

Conclusion

In the opinion of the Legal Department, the current interpretation of the "community benefit test" limiting the welfare exemption to organizations performing charitable activities within the state is both rational and defensible. Nevertheless, such a limited, geographical interpretation of "community" is neither mandated nor required by the constitutional, statutory, or judicial authorities cited herein and is not legally prescribed. Therefore, we recommend that the Board provide guidance with regard to its intent for the definition of "community" in this context – in consistency with the Constitution, statutes, and appellate decisions – for purposes of applying the "community benefit test."

If you need more information or have any questions, please contact Acting Assistant Chief Counsel Robert Lambert at (916) 324-6593.

Approved: _____
Ramon J. Hirsig
Executive Director

KEC:pb

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cc: Mr. Ramon Hirsig, MIC: 73
Mr. David Gau, MIC: 63
Mr. Robert Lambert, MIC: 82
Mr. Dean Kinnee, MIC: 64
Mr. Todd Gilman, MIC: 70